Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-183

In the

SUPREME COURT

of the UNITED STATES

October Term, 1985

JAMES E. AMEND and J. D. AMEND,
Petitioners,

vs.

H. BRYAN POFF, JR., NAOMI HARNEY, MARVIN MARSHALL, J. E. BLACKBURN, BILL SHEEHAN, AMARILLO NATIONAL BANK, KEITH LINDMARK, DAVID C. MATTKA, D. BARRY STONE, R. A. WILSON, ROBERT L. TEMPLETON, GASSAWAY & GURLEY, NORTH STATE BANK AND THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Respondents.

On Petition For Writ of Certiorari
From The United States Court of Appeals
For The Fifth Circuit

BRIEF OF RESPONDENTS GASSAWAY & GURLEY IN OPPOSITION

JODY G. SHEETS
GASSAWAY, GURLEY, SHEETS & MITCHELL
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(806) 273-2857

BEST AVAILABLE COPY

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CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney for Respondent, GASSAWAY & GURLEY, certifies that the list of persons and parties having an interest in the outcome of this case on Page 48-49 of Amends' Petition for Writ of Certiorari is correct.

GASSAWAY, GURLEY, SHEETS & MITCHELL

By: Jody G. Sheets
Jody G. Sheets

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I.

OPINIONS BELOW

Neither the opinion of the 5th Circuit nor the opinion of the United States District Court for the Northern District of Texas at Amarillo are reported.

II.

JURISDICTION

Jurisdiction is conferred on this Court by 28 U.S.C. §1254(1) to review an order of the Court of Appeals entered on June 3, 1985.

III.

STATUTE INVOLVED

42 U.S.C. § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

IV.

QUESTION PRESENTED FOR REVIEW

Did Petitioners have a property or liberty interest that was protected by the United States Constitution?

V.

STATEMENT OF THE CASE

Although Petitioners' statement of the case is neither complete nor accurate in all respects, sufficient information is presented for the Court to determine the issues before it.

VI.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

A. TO THE EXTENT THAT PETITIONERS SEEK RELIEF UNDER FEDERAL LAW, THIS SUIT WAS PROPERLY DISMISSED IN ITS ENTIRETY FOR WANT OF SUBSTANTIAL FEDERAL QUESTION.

"It is axiomatic that in order to be entitled to relief under 42 U.S.C. § 1983, a plaintiff must show that he was deprived of a right secured to him under the Constitution or Federal Law, and that the deprivation occurred under color of State Law." Taylor v. St. Clair, 685 F.2d 982 (5 Cir. 1982).

Excluding the purely conclusory allegations and directing our attention only to the well pleaded facts, if any there be, the Petitioners present neither.

B. PENDENT JURISDICTION WAS LIKEWISE PROPERLY DENIED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION.

On this point the Courts below properly cite Hagans v. Lavine, 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974). Additionally we would cite Mine Workers v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966) and Moor v. County of Alameda, 411 U.S. 693, 93 S.Ct. 1785, 36

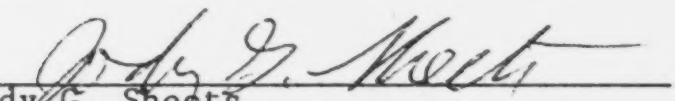
L.Ed.2d 596 (1973). Reference should also be made to the court's discussion in Joiner v. Diamond M Drilling Co., 677 F.2d 1035 (5 Cir. 1982). The Court is there considering ancillary, rather than pendent, jurisdiction; but, as the footnote at page 1042 points out, the Court's reasoning in Gibbs applies with equal force in defining the proper reach of both pendent and ancillary jurisdiction.

CONCLUSION

This is not a case of Constitutional dimensions. This is not a case that raises a substantial federal question. The Supreme Court of the United States was not given jurisdiction for the purpose of affording the losing party a third trial. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

GASSAWAY, GURLEY, SHEETS & MITCHELL

By: 

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ATTORNEYS FOR RESPONDENTS,
GASSAWAY & GURLEY

CERTIFICATE OF SERVICE

The undersigned attorney for Respondents, GASSAWAY & GURLEY, hereby certifies that true and correct copies of the foregoing Reply of Respondent, GASSAWAY & GURLEY, to the AMENDS' Petition for Writ of Certiorari have been forwarded to counsel for each other party separately represented in this proceeding, or if unrepresented, to the party himself, by depositing same in a U.S. Post Office with First Class Postage Pre-Paid, properly addressed to counsel of record or the party at his post office address, all according to the provisions of Rule 28 of the Supreme Court Rules.

JODY G. SHEETS

Attorney for Respondents,
Gassaway & Gurley